

Kaaran Thomas (State Bar No. 7193)
McDonald Carano Wilson, LLP
2300 West Sahara Avenue
No. 10, Suite 1000
La Vegas, Nevada 89102
Telephone No.: 702.873.4100
Fax No.: 702.873.9966

Electronically Filed May 11, 2007

Attorneys for Kreg Rowe, et. al

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY
ADVISORS, LLC,

USA CAPITAL DIVERSIFIED
TRUST DEED FUND LLC,

USA CAPITAL FIRST TRUST
DEED FUND LLC,

USA SECURITIES, LLC,

Debtors.

Affects:

☒ All Debtors

: USA Commercial Mortgage Company

: USA Capital Realty Advisors, LLC

: USA Capital Diversified Trust Deed
Fund, LLC

: USA Capital First Trust Deed Fund,
LLC

: USA Securities, LLC

Case No. BK-S-06-10725-LBR

Case No. BK-S-06-10726-LBR

Case No. BK-S-06-10727-LBR

Case No. BK-S-06-10728-LBR

Case No. BK-S-06-10729-LBR

CHAPTER 11

(Jointly Administered Under
Case No. BK-S-06-10725-LBR)

**DECLARATION OF BRETT SEABERT IN
SUPPORT OF MOTION TO QUASH
SUBPOENAS DIRECTED TO WELLS
FARGO BANK, N.A., WELLS FARGO
BANK OF NEVADA, NEVADA STATE
BANK, JP MORGAN CHASE, BANK OF
THE WEST, OPPENHEIMER FUNDS,
BANK OF AMERICA, AND CITY BANK, OR
IN THE ALTERNATIVE, MOTION FOR
PROTECTIVE ORDER**

STATE OF NEVADA

COUNTY OF WASHOE

} ss.

I, BRETT SEABERT, being first duly sworn, do hereby swear under
penalty of perjury that the assertions contained in this affidavit are true and
correct.

1 1. I am over the age of eighteen (18) years. I have personal knowledge
2 of the facts stated within this affidavit. If called as a witness, I would be
3 competent to testify to these facts.

4 2. I am the Chief Financial Officer, Chief Operating Officer and
5 minority owner of Tanamera Commercial Development, LLC, a position I have
6 held for nearly six years. I am familiar with the ownership interests and
7 financial records of the various Movant entities.

8 3. The Debtors never had an ownership interest in any of the Movant
9 companies. Rather, USA Investment Partners, LLC ("USAIP"), which is not a
10 Debtor in this action, has or had an ownership interest in 13 of the 51 Movant
11 companies. Several of these are no longer active.

12 4. To the best of my knowledge and belief, the following Movant
13 entities have never received a loan or any type of funding from USACM. In
14 addition, USAIP has never been an owner or member of the following entities:

15 B&L Investments, Inc.

16 Caughlin Club Management Partners, LLC

17 Caughlin Club Real Property Investors, LLC

18 CCRE Investors, LLC

19 Chardonnay Village Investors, LLC

20 Classic Residences, LLC

21 Comstock Village Investors, LLC

22 DDH Financial Corp

23 Diamond Village Investors 11, LLC¹

24 Diamond Village Investors 1 & 12, LLC

25
26 ¹ The Subpoenas seek private financial records for "Diamond Village Investors, LLC." No such
27 entity exists. However, because the subpoenaed Banks might confuse the entity names,
28 Diamond Village Investors 11, LLC and Diamond Village Investors 1 & 12, LLC join in this
motion.

1 Double Diamond Management Company, LLC

2 Emigh Investments, LLC

3 Equus Management Group

4 Homewood Village Investors, LLC

5 La Hacienda Land Investors, Inc.

6 Longley Town Centre, LLC²

7 Longley Professional Campus, LLC

8 The Meadows Investors, LLC

9 Monticello Investors, LLC

10 Mountainview Campus Investors, LLC

11 MP Tanamera, LLC

12 Rowe Family Trust

13 RTTC Communications, LLC

14 Sierra Vista Investors, LLC

15 Sparks Galleria Investors II, LLC

16 TCD Financial Corp.

17 TCD Land Investments, LLC

18 5. Some of the Movant entities have received loans from or brokered by
19 USACM, but most of those loans have been fully repaid. For example, the
20 following entities received loans which have now been repaid: Double Diamond
21

22 ² Although USAIP does not hold an ownership interest in this entity, it did serve a roll as a
23 manager at some point in time. USAIP also served as a manager, directly or indirectly, in the
24 following: Cabernet Highlands, LLC, Foothill Commerce Center, LLC, Longley Professional
25 Campus, LLC, Mountainview Campus Investors, LLC, Preserve at Galleria, LLC, Reno Corporate
26 Center, LLC, Reno Design Center, LLC, RTTC Communications, LLC, Sandhill Business
Campus, LLC, Sierra Vista Investors, LLC, South Meadows Commercial Property, LLC,
Tanamera Commercial Development, LLC, Tanamera Corporate Center, LLC, TRP Fund
Managers, LLC fka Tanamera Development, LLC, Tanamera Resort Condominiums, LLC,
Tanamera Resort Partners, LLC, Vineyard Highlands, LLC, The Vineyard Investors, LLC,
Vineyard Professional Campus, LLC, Waterford Partners, LLC, and Wyndgate Partners II, LLC.

Homes, LLC, Foothill Commerce Center, LLC, Miners Village Investors, LLC, Pioneer Village Investors, LLC, Preserve at Galleria, LLC, Reno Corporate Center, LLC, Sandhill Business Campus, LLC, South Meadows Commercial Property, LLC, South Meadows Office Investors, LLC, Sparks Galleria Investors, LLC, Tanamera Homes, LLC, Tanamera Resort Condominiums, LLC, The Vineyard Investors, LLC, Waterford Partners, LLC, Wyndgate Partners, II, and Wyndgate Village Investors, LLC³. Even for the remaining entities that have not yet repaid their loans, they similarly should not be subject the intrusive subpoenas into their personal financial data merely because of their status as borrowers.⁴

6. With respect to those entities for which USAIP, not the Debtors, have or had a direct membership interest, their private financial records similarly should not be the subject of these abusive subpoenas. Those entities are as follows:

Cabernet Highlands, LLC (indirect)⁵

Double Diamond Management Company, LLC

Preserve at Galleria, LLC⁶

Reno Design Center, LLC

South Meadows Office Investors, LLC

Sparks Galleria Investors, LLC⁷

³ The Subpoenas seek private financial records to "Wyndgate Investors, LLC." No such entity exists. However, because the subpoenaed Banks might confuse the entity names, Wyndgate Village Investors, LLC joins in this motion.

⁴ Only two currently have loans outstanding to USACM: Cabernet Highlands, LLC and Tanamera Commercial Development, LLC. (*Id.*) Tanamera Commercial Development, LLC has been informed that the loan was transferred to USAIP a number of years ago.

⁵ The term "indirect" means that USAIP has an interest in this entity only because of its ownership interest in a member of Cabernet Highlands, LLC. Other indirect ownership interests are also noted.

⁶ USAIP's interest in this entity was sold in April 2006.

⁷ USAIP's interest in this entity was sold in April 2006.

1 Tanamera Commercial Development, LLC
2 Tanamera Corporate Center, LLC (indirect)
3 TRP Fund Managers, LLC fka Tanamera Development, LLC
4 Tanamera Resort Partners, LLC⁸ (indirect)
5 Vineyard Highlands, LLC
6 Vineyard Professional Campus, LLC (indirect)
7 Wyndgate Partners II, LLC

8 7. The subpoenas also go so far as to seek the personal financial
9 records of several employees of the Movant entities. Movants Kreg Rowe, Brett
10 Seabert, Kraig Knudsen, Joe Lopez and Mike Efstratis are employed by
11 Tanamera Commercial Development, LLC.

12 8. Despite a history of negotiations and cooperation between me, Kreg
13 Rowe and counsel for the Trust, none of the Movants were notified that records
14 related to Movants were the subject of a Subpoena in Nevada nor were courtesy
15 copies provided to the our counsel.

16 Date: MAY 3, 2007

17
18 
19 Brett Seabert

20
21
22
23
24
25
26 ⁸ USAIP's interest in Tanamera Resort Partners, LLC is less than 1/10th of 1%. TRP Fund
27 Managers, LLC, which is 66 2/3 owned by USAIP, invested a mere \$50,000 of the total \$49.2
28 million of total capital contributions into this entity.